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IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF ARIZONA

Clyver Pleaugh, an individual;

Case No.:

Plaintiff,

COMPLAINT

vs.

(Jury Trial Demanded)

The City of Phoenix, a municipal corporation; The City of Phoenix Housing Department, a federally funded public housing program; Dina Fernandez, individually and in her official capacity as Housing Supervisor for City of Phoenix Housing Department; James Navarrette, individually and in his official capacity as Property Manager for the City of Phoenix Housing Department; Angela Hogan, individually and in her official capacity as Housing Supervisor for the City of Phoenix Housing Department;

Defendants.

Plaintiff Clyver Pleaugh, for his Complaint against the Defendants, hereby alleges as follows:

INTRODUCTION

1. Plaintiff Clyver Pleaugh ("Plaintiff"), an eighty-one year old man, is a mentally disabled person protected under the Americans with Disabilities Act (42 U.S.C.

1 §12101) and the federal Fair Housing Act (42 U.S.C. § 3601, et seq.). Clyver suffers
2 from anxiety and hypertension with physical manifestations and is under the care of a
3 doctor.

4 2. Clyver resides in Phoenix at Fillmore Gardens, which is public housing
5 provided and operated by Defendants the City of Phoenix and the City of Phoenix
6 Housing Department (collectively “PHD”) through their participation in the HUD
7 Public Housing Program.
8

9 3. After eighteen years of residing at Fillmore Gardens without a single lease
10 violation, PHD has now terminated the tenancy of Clyver for an alleged violation of his
11 lease and now seeks to formally evict Clyver from the premises.
12

13 4. Although Plaintiff made multiple requests for reasonable accommodations
14 to PHD due to his disability, PHD literally refused to even consider the requests in blatant
15 violation of federal law and regulations.
16

17 5. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 3604,
18 42 U.S.C. § 12131, 42 U.S.C. § 1437, and the due process and equal protection clauses
19 of the United States Constitution, for a judgment declaring that the Defendants’ policies
20 and practices of failing to provide him with a reasonable accommodation are unlawful.
21

22 6. Plaintiff alleges that the Defendants’ policies and practices of denying
23 requests for reasonable accommodations, and refusing to even consider them, made by
24 persons with disabilities results in discrimination against persons with disabilities in
25
26

1 violation of the Americans With Disabilities Act (ADA), the Fair Housing Amendments
2 Act (FHAA), and the Rehabilitation Act of 1973 (Section 504).

3 7. Plaintiff alleges that defendants terminated his participation in the public
4 housing program in violation of the Due Process Clause, the Americans With Disabilities
5 Act (ADA), the Fair Housing Amendments Act (FHAA), and the Rehabilitation Act of
6 1973 (Section 504).

8 JURISDICTION

9 8. Jurisdiction over Plaintiff's claims is conferred on this Court by 28 U.S.C.
10 § 1331 (federal question jurisdiction) in that this action arises under the Constitution and
11 laws of the United States and 28 U.S.C. § 1343(a)(3) and (4) to redress the deprivations,
12 under color of state law, of rights secured by the Fourteenth Amendment to the United
13 States Constitution and for violation of the civil rights of Plaintiffs.

14 9. Plaintiff's claims arise under the Fair Housing Act, Title VIII of the Civil
15 Act of 1968 as amended, 42 U.S.C. § 3601, et seq.; the United States Housing Act, 42
16 U.S.C. § 1437, et seq.; the Fourteenth Amendment to the United States Constitution;
17 federal contracts; and 42 U.S.C. § 1983.

18 10. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and
19 2202 and 42 U.S.C. § 1983, which provides redress for the deprivation, under color of
20 state law, of rights, privileges and immunities secured to all citizens and persons within
21 the jurisdiction of the United States by the Constitution and laws of the United States.

18. Defendant Dina Fernandez is a housing supervisor for PHD. In that capacity she is responsible for the daily oversight, and day to day administration of the program. In that capacity she made the initial determination to terminate Plaintiff's tenancy and prosecuted the Plaintiff's eviction, and thus effectively ended

1 Plaintiff's participation in the program. Upon information and belief, Dina
2 Fernandez makes decisions regarding whether or not to grant requests for reasonable
3 accommodations for Public Housing Program participants. The actions taken
4 against the Plaintiff by Dina Fernandez, and PHD, are the policy and/or custom of
5 PHD and Dina Fernandez under circumstances such as those in this case.
6

7 19. Defendant James Navarrette is a property manager for PHD. In that
8 capacity, James Navarrette prosecuted and continues to prosecute the eviction of Plaintiff.
9 The actions taken against the Plaintiff by James Navarrette, and PHD, are the policy
10 and/or custom of PHD under circumstances such as those in this case.
11

12 20. Defendant Angela Hogan is a housing supervisor for PHD. Angela Hogan
13 was on the hearing panel that terminated Plaintiff's tenancy and she also signed off on
14 the termination notice sent to Plaintiff. Angela Hogan served on the hearing panel
15 pursuant to PHD's custom and policy of having someone to represent PHD's interests
16 during the eviction process.
17

18 **FACTUAL BACKGROUND**

19
20 21. Plaintiff has been a resident of Fillmore Gardens for eighteen years with a
21 perfect tenant history and no prior lease violations.

22 22. A resident by the name of Steven Halpaus ("Steven") moved into Fillmore
23 Gardens and began engaging in strange stalking-like behavior towards multiple residents
24 of Fillmore Gardens including Plaintiff.
25
26

1 23. Plaintiff resides in an apartment that is in the same hallway as Steven's
2 apartment. Plaintiff's apartment is situated in such a manner that Plaintiff must walk
3 past Steven's apartment when Plaintiff leaves and returns to his apartment.

4 24. Steven would watch Plaintiff closely from his apartment in a stalking-like
5 manner and began recording Plaintiff by audio and video means.
6

7 25. In March of 2018, Steven's strange behavior towards Plaintiff resulted in
8 two verbal altercations during which Plaintiff made verbal threats of violence against
9 Steven.
10

11 26. The manner in which Plaintiff reacted to Steven was the result his mental
12 disability. The other residents that were the subject of similar strange conduct from
13 Steven did not react with verbal threats against Steven.
14

15 27. There was not and has never been any actual physical violence between
16 Plaintiff and Steven.

17 28. Steven told Defendant Dina Fernandez that he did not want Plaintiff evicted
18 from Fillmore Gardens and that Plaintiff should be moved to a different unit away from
19 Steven.
20

21 29. PHD via Dina Fernandez issued a thirty-day notice of termination of
22 Plaintiff's residency signed by Dina Fernandez.
23

24 30. Plaintiff requested and informal meeting to discuss the termination of his
25 residency.
26

1 31. On October 23, 2018, an informal hearing was held during which Plaintiff
2 informed PHD of his disability and gave PHD a doctor's note verifying that Plaintiff
3 suffered from anxiety. (*See* Record of Informal Hearing attached as Exh. A); (*see also*
4 Plaintiff's Doctor's Note Verifying Medical Condition attached as Exh. B).

5
6 32. At the informal hearing, Plaintiff told Defendants that he had a disability
7 that needed to be accommodated under the ADA and FHA, and he requested that, in lieu
8 of an eviction, PHD either (1) move him to an apartment where he would not be in
9 contact with Steven, or (2) give Plaintiff a lease violation (which would be his first in
10 eighteen years) and a second chance at keeping his residency. Exh. A.

11
12 33. Defendants made no request for further information nor did they otherwise
13 indicate that Plaintiff's accommodation request was not in accordance with PHD's
14 policy. At no time did PHD attempt to provide further information or guidance to
15 Plaintiff as to PHD policy or any procedure on ADA accommodation requests.
16

17 34. On October 30, 2018, the hearing officer issued a decision on the informal
18 hearing holding only that "there is sufficient evidence to support the 30 day notice of
19 termination." Exh. A. The informal decision specifically mentions the reasonable
20 accommodation requests and the evidence presented in that regard, but the decision
21 makes no mention of whether or not such was considered or the reasons for any denial.
22
23 *Id.*

24
25 35. On November 8, 2018, Plaintiff submitted a Request for Formal Hearing
26 stating: "I have a mental disability and should be accommodated." (*See* Request for

1 Formal Hearing attached as Exh. C). Plaintiff attached to the Request his doctor's note
2 verifying that Plaintiff suffered from anxiety and a medical record showing that Plaintiff
3 had hypertension. *Id.*

4
5 36. On November 16, 2018, PHD via Defendant James Navarrette issued a
6 notice of Formal Hearing stating "the Housing Department will conduct a formal hearing
7 in attempt to resolve some of your concerns you have addressed with the Admin Office."
8 (*See* Notice of Formal Hearing attached as Exh. D).

9
10 37. The City of Phoenix held a formal hearing where a three-member panel
11 included Defendant Angela Hogan, a Housing Supervisor for the city of Phoenix, who
12 stated "I am here to represent the City of Phoenix." (*See* Transcript of Formal Hearing
13 attached as Exh. E at 1: 10-12).

14
15 38. Angela Hogan stated she was the housing supervisor for a different
16 apartment complex, but upon information and belief, Angela Hogan had actually just
17 been transferred to Fillmore Gardens. *Id.*

18
19 39. Plaintiff objected to her sitting on the panel as she was not independent, but
20 the objection was denied. *Id.* at 2-3: 16-25, 1-12.

21
22 40. Also present at the hearing were Defendants Dina Fernandez and James
23 Navarrette to prosecute the eviction.

24
25 41. At the formal hearing, Plaintiff reiterated his requests for an
26 accommodation and pointed to his Dr. Letter and medical record regarding his anxiety
disorder and hypertension. Exh. E at 5-9: 16-25, 1-7

1 42. The hearing officer asked if Plaintiff wanted to speak with Dina Fernandez
2 about a reasonable accommodation to which Plaintiff replied yes. However, Dina
3 Fernandez specifically refused to even discuss a reasonable accommodation request with
4 Plaintiff because stating: The “formal is a yes or no for eviction.” *Id.* at 10-11: 2-25, 1-
5 15.

6
7 43. Dina Fernandez was asked: “why you wouldn't consider an accommodation
8 for him?” Dina Fernandez responded: “This is a threat that was done to another resident
9 here at Fillmore Gardens.” *Id.* at 14: 10-16.

10
11 44. When Dina Fernandez was asked if she knew the criteria for
12 accommodations, she responded:

13 We have a Reasonable Accommodation Request Form that when a
14 resident feels that we can accommodate their disability, we are more
15 than happy to accommodate that.” When we know about it in advance,
16 they go to the manager. They fill out this form. And they say these are
17 my disabilities. We did not know of [Plaintiff's] disability until you
18 brought it to us and to our attention the day of the Informal.” *Id.* at 16:
19 3-18.

20 45. Dina Fernandez stated: “This, at this point, disability, no disability, he is
21 still a resident, and residents are to abide by the Model Lease and the Model Lease
22 Addendum and the Rules and Regulations of our Senior Housing.” *Id.* at 17: 3-6.

23 46. Dina Fernandez stated that she was “not denying a request of
24 accommodation because it was never presented to us.” According to Dina Fernandez,
25 none would be considered because it was “too far advanced already” and Plaintiff “had
26 many opportunities even from that, even from the informal hearing.” *Id.* at 17: 7-15.

1 47. At the formal hearing, another witness testified that she was subject to the
2 same type of strange behavior from Steven and that the manner in which she reacted
3 which was different from Plaintiff. *Id.* at 22-25.

4 48. At the formal hearing, Plaintiff went on to present evidence showing that
5 his disabilities were the cause of the incident for which he was being evicted. *Id.* at 26-
6 27: 15-25, 1-5.

7 49. At the formal hearing, Plaintiff presented evidence that he was not a threat
8 to Steven and that he had to get it off his chest verbally before he ended up in the hospital.
9 *Id.* at 20: 18-22.

10 50. The Defendants were asked to consider the hardship that termination of
11 plaintiffs' participation in the public housing program would cause to plaintiffs,
12 specifically the likelihood that the eviction would result in him "sleeping underneath
13 a bridge" and that Plaintiff only received \$700 per month. *Id.* at 20-21: 23-15, 1-4;
14 *Id.* at 27: 14-16.

15 51. On November 27, 2018, the Panel issued a formal decision terminating
16 Plaintiff's tenancy, stating:

17 The panel rejected tenant's claim about having a disability that must be
18 accommodated as tenant did not follow the procedure to have his physician
19 identify a disability that requires accommodation, what accommodations
20 are necessary, and whether such accommodations could be provided at
21 Fillmore Gardens.

22 (See Summary of Formal Hearing attached as Exh. F).

23 52. Prior to the Summary of Formal Eviction, PHD had never made any
24 mention of a formal "procedure" which must be followed.
25
26

1 53. On December 10, 2018, Plaintiff had his doctor fill out a verification form
2 found online. In the form, Plaintiff's doctor verifies that Plaintiff "IS disabled" and he
3 states that Plaintiff needs to live in an apartment that avoids the video surveillance
4 performed by Steven. (See Plaintiff's Doctor's Verification form attached as Exh. G).

5
6 54. Plaintiff's doctor also stated in the form that avoidance of preceptory factors
7 is common therapy for anxiety and that living in an area away from Steven's video
8 surveillance would be such therapy. *Id.*

9
10 55. Plaintiff's doctor verified that the requested accommodation was necessary
11 and that he had requested this type of accommodation for individuals with similar
12 impairments. *Id.*

13 56. Plaintiff hand-delivered the verification form to Defendant James
14 Navarrette on December 10, 2018, but PHD never responded to the verification form or
15 otherwise followed up with Plaintiff on his requests for a reasonable accommodation.

16
17 57. On February 28, 2019, PHD filed a forcible detainer action in Maricopa
18 County Superior Court, case number CV2019-002011, to evict and remove Plaintiff
19 from Fillmore Gardens. (See Forcible Detainer Pleadings attached as Exh. H).

20
21 58. The Forcible Detainer Complaint attempts to evict Plaintiff based solely on
22 the delivery of eviction notices without mention of the alleged reasons for the eviction
23 or Plaintiff's requests for a reasonable accommodation or the reasons for its denial. *Id.*

24
25 59. The Forcible Detainer hearing is set for March 20, 2019.

26

FIRST CLAIM FOR RELIEF

60. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth in full herein.

61. Plaintiff is a handicapped person as defined in the FHAA, 42 U.S.C. § 3602 (h), and has standing to commence this action.

62. Pursuant to provision in the 42 U.S.C. § 3604 it is unlawful:

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap [of that buyer or renter]; ...

(3) For the purposes of this section, discrimination includes-- . . .

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

63. Defendants violated the FHAA, 42 U.S.C. § 3604 (f) (3) (B), by refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations were necessary to afford Plaintiff an equal opportunity to use and enjoy a dwelling.

64. Defendants violated the FHAA, 42 U.S.C. § 3604 (f) (3) (B), by refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations were necessary to afford Plaintiff an equal opportunity to use and enjoy a dwelling.

65. Plaintiff is an aggrieved person, as that term is defined in the FHAA, 42 U.S.C. §§ 3602 (i), and has suffered damages as a result of the conduct of the Defendants.

66. The discriminatory actions of defendants were intentional, willful, and taken in disregard of the rights of Plaintiff.

SECOND CLAIM FOR RELIEF

67. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth in full herein.

68. Plaintiff is a qualified individual with a disability as defined in the Rehabilitation Act, and has standing to commence this action.

69. Plaintiff's tenancy in the Public Housing program is a program or activity as the same is defined by Section 504, 29 U.S.C. § 794.

70. The Defendants have an affirmative obligation to ensure that the Plaintiff receives the full benefits of participation in the Public Housing program.

71. The Defendants have denied Plaintiff the full benefits of the housing program by denying his request for a reasonable accommodation and in fact failing to even consider it in violation of Section 504 of the Rehabilitation Act.

72. The discriminatory actions of Defendants were intentional, willful, and taken in disregard of the rights of Plaintiff.

THIRD CLAIM FOR RELIEF

73. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth in full herein.

74. The Defendants acted under color of law, custom or policy in the administration of their duties to deprive plaintiff of its rights under the Americans with Disabilities Act, The Fair housing Act, the Rehabilitation Act, 42 U.S.C. 1437 (d)(k) and Plaintiff has a remedy pursuant to 42 U.S.C. § 1983.

FOURTH CLAIM FOR RELIEF

75. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth in full herein.

76. Plaintiff is a person with disabilities pursuant to the United States Housing Act, (42 U.S.C. §§ 1437 et. seq.), and the Housing and Community Development Act of 1974, (42 U.S.C. §§ 1437e et. seq.), and has standing to commence this action.

77. The respondent PHD is responsible for the proper administration of the Public Housing program in the City of Phoenix.

78. The Defendants' Public Housing program, is federally regulated.

79. The regulations for the administration of the Public Housing program can be found in Title 24 of the Code of Federal Regulations.

1 80. Pursuant to 24 CFR § 960.103, the Defendants are required to be in
2 compliance at all times with The Fair Housing Amendments Act, (42 U.S.C. §§ 3610 et.
3 seq.), the Americans With Disabilities Act, (42 U.S.C. §§ 12101 et. seq.), Section 504
4 of the Rehabilitation Act of 1973, (42 U.S.C. § 794), as well as numerous other anti-
5 discrimination statutes.

6
7 81. The Defendants have denied Plaintiff's request for a reasonable
8 accommodation. Defendants violated 42 U.S.C. § 3604 (f) (1) (A), by discriminating
9 against Plaintiff in the rental of a dwelling, or otherwise making unavailable or denying
10 them a dwelling, because of a handicap.

11
12 82. Plaintiff is an aggrieved person, as defined by 42 U.S.C. § 3602 (i), and has
13 suffered damages as a result of the conduct of the Defendants.

14
15 83. The discriminatory actions of Defendants were intentional, willful, and
16 taken in disregard of the rights of Plaintiff

17 **FIFTH CLAIM FOR RELIEF**

18 84. Plaintiff repeats and realleges each and every allegation of this
19 Complaint as if fully set forth in full herein.

20
21 85. The United States Constitution guarantees Plaintiff Due Process
22 prior to the deprivation of a property right.

23 86. In this case, the minimum due process that must be afforded Plaintiff
24 is outlined by the grievance hearing procedure found at 42 U.S.C. § 1437d(k)
25 which provides in pertinent part:
26

The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will—

- (1) be advised of the specific grounds of any proposed adverse public housing agency action;
- (2) have an opportunity for a hearing before an **impartial party** upon timely request within any period applicable under subsection (1);
- (3) have an **opportunity to examine** any documents or records or **regulations related to the proposed action**;
- (4) be entitled to be represented by another person of their choice at any hearing;
- (5) be entitled to ask questions of witnesses and have others make statements on their behalf; and
- (6) be entitled to receive a written decision by the public housing agency on the proposed action.

87. As a result of Defendants actions, Plaintiff has been deprived of rights, privileges and immunities granted by the Constitution and laws of the United States and has a remedy for such deprivation under 42 U.S.C. § 1983 and IS entitled to costs and reasonable attorney's fees under 42 U.S.C. § 1988.

SIXTH CLAIM FOR RELIEF

88. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth in full herein.

89. As a result of Defendants actions, Plaintiff has been, solely by reason of his disability, been subject to discrimination under a program or activity receiving Federal financial assistance. and has a remedy for such deprivation under 29 U.S.C. § 794a and is entitled to costs and reasonable attorney's fees under 42 U.S.C. § 1988.

SEVENTH CLAIM FOR RELIEF

90. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth in full herein.

91. As a result of Defendants' actions, Plaintiff has been, solely by reason of his disability, been subject to discrimination under a program or administered by a local government and has a remedy for such deprivation under 42 U.S.C. § 12133 and is entitled to costs and reasonable attorney's fees under 42 U.S.C. § 1988.

RELIEF REQUESTED

WHEREFORE, Plaintiff Clyver Pleaugh requests that the Court:

A. Assume jurisdiction of this action;

B. Annul and reverse the determination and decision of the defendants in terminating Plaintiff's tenancy in the Public Housing program;

C. **DECLARE that**

1. the discriminatory housing practices of the defendants as set forth above violate the Fair Housing Amendments Act, 42 U.S.C. §§ 3601 et seq.;

2. the discriminatory housing practices of the defendants as set forth above violate the Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq.;

3. the discriminatory housing practices of the defendants as set forth above violate Section 504 of the Rehabilitation Act of 1973, 42 U.S.C. § 794;

D. **ORDER** the Defendants to grant Plaintiff's request for a reasonable

1 accommodation by (1) restoring his tenancy, (2) moving him to another suitable
 2 apartment within the complex, and/or (3) moving him to another suitable apartment
 3 within another public housing complex;

4 E. **ENJOIN** the defendants, their agents, employees, and successors, and all
 5 other persons in active concert or participation with any of them, from discriminating
 6 because of handicap, race, color, religion, sex, familial status, or national origin against
 7 any person in any aspect of the rental or sale of a dwelling. . More specifically,
 8 Plaintiff requests that the Court enjoin the defendants from refusing to make reasonable
 9 accommodations in rules, policies, practices, or services, when such accommodations
 10 may be necessary to afford persons with a handicap equal opportunity to use and enjoy
 11 dwellings.
 12
 13

14 F. **AWARD** such damages as will compensate Plaintiff fully for the damages
 15 caused by the Defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3612 (o) (3)
 16 and 42 U.S.C. § 3613 (C);
 17

18 G. **AWARD** punitive damages to Plaintiff pursuant to 42 U.S.C. § 3612 (o)
 19 (3) and 42 U.S.C. § 3613 (c);
 20

21 H. **AWARD** attorney's fees, pursuant to 42 U.S.C. § 1988.

22 I. **GRANT** such further relief as this Court may deem just.

23 // // //

24 // // //

25 // // //

26 // // //

1 **Dated** this 15th day of March, 2019.

2
3 **HORNE LAW, PLLC**

4
5 By /s/ Mark W. Horne
6 Mark W. Horne
7 *Attorney for Plaintiff*
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Attorney for Plaintiff

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VERIFICATION

vs.

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Defendants.

I, Clyver Pleaugh, first being duly sworn, states under oath that:

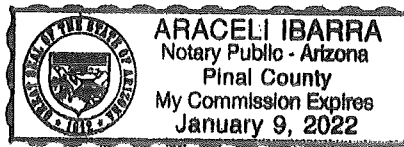
1 I am the Plaintiff herein and have read the foregoing Complaint, and the matters
2 contained therein are true and correct to the best of my knowledge, information and
3 belief.

4
5 **DATED** this 13 day of March, 2019.

6
7 By Clyver Pleaugh
8 Clyver Pleaugh

9
10 Subscribed to and sworn before me
11 this 13 day of March, 2019

12
13 [Signature]
14 Notary Public



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